IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6094 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURAJBEN ANOPSINH CHAVDA

Versus

FULIBEN WD/O MOHANSINH PRATAPSINH

Appearance:

1. Special Civil Application No. 6094 of 1992

MR JITENDRA M PATEL for Petitioner.

Mr. MA Bukhari, AGP for Respondent No. 1,3

Rule served for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/02/2003

ORAL JUDGEMENT

The present petition is filed against the order passed by the State Government on 23-8-1991 confirming the order passed by the Collector dated 7-7-1990 who in turn had confirmed the order passed by the Deputy Collector on 9-6-1989. The petitioner has also prayed for quashing and setting aside all the three orders passed by the authorities below.

2. It is the case of the petitioner that the land bearing Block Nos. 60, 152, 195, 102, 76 and 148 of Village Bhada was running in the name of the petitioner and respondent No.2, namely Manjulaben Dalpatsinh Chavda. The property belonged to the deceased husband of the petitioner and the deceased husband of the respondent No.2. Both the persons died and therefore the property was mutated in the name of the present petitioner and respondent No.2 being widows of the sons of deceased Mohansinh Pratapsinh. The respondent No.1, namely Fuliben was the widow of the deceased Mohansinh Pratapsinh.

3. It is further stated in the petition that there was family partition entered into between the family members on 14.7.1988 and it was agreed between the family members to have the properties in the name of different persons. It was provided in the said family arrangement that respondent No.1 Fuliben was entitled to maintenance till her death and the petitioner and the respondent No.2 had to pay Rs. 2,000/= per year as maintenance along with other arrangement of the family property. An entry was made in the revenue record showing partition amongst the family members. The said entry was recorded as Entry No. 1133 on 17.8.1988. It was further stated that on the basis of the said Entry the names of the persons who got the property by way of family arrangement were shown in the said Entry.

4. Being aggrieved by the said Entry, Fuliben respondent No.1 herein has filed RTS Appeal No. 52 of 1988 before the Deputy Collector, Olpad, and the Deputy Collector vide his judgment and order dated 9.6.1989 has allowed the said appeal and cancelled the Entry No. 1133 for the reasons stated in his order.

5. Being aggrieved by the said order of the Deputy Collector, the petitioner and the respondent No.2 both have preferred an appeal to the Collector of Surat being Appeal No. 249 of 1989 raising the grievance that the order of the Deputy Collector is bad and the Revenue authorities are bound to recognise the partition of the family and cannot decide the title of the property as well as civil rights of the parties. It was further stated in the said appeal that if the party is aggrieved with the family arrangement then proper course open to that party would be to file civil suit before the competent court and to get his right decided. However, the Collector was not convinced with the arguments canvassed on behalf of the present petitioner and the

respondent No.2 and dismissed the said appeal vide his order dated 23.8.1991. Being further aggrieved by the said order, the petitioner and the respondent No.2 had filed revision before the State Government and the said revision was also decided against the present petitioner as well as the respondent No.2.

6. It is this order of the State Government which is under challenge in the present petition. Heard Mr. Jitendra M. Patel, learned advocate appearing for the petitioner and Mr. MA Bukhari, learned AGP appearing for the respondent State. Nobody appears on behalf of respondent No.1. Mr. Patel has submitted that all the three Revenue authorities below have committed grave error while deciding the title of the properties belonging to the parties. He has further submitted that the Revenue authorities have no right to decide the question of title arising under the RTS proceedings. In support of his submission, he has relied on the decision of the Hon'ble Supreme Court in the case of State of Gujarat vs. Patel Raghav Natha and Ors. - (1969) 10 GLR 992, wherein it is held that "when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious, the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent Court and not to decide the question of title himself against the occupant." Mr. Patel has, therefore, submitted that in the present case, the revenue authorities have merely held that the respondent No.1 Fuliben has a share in the property and she was entitled to inherit the property. According to him, this finding given by the authorities below is contrary to the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision. Mr. Patel has further submitted that in the present case after the death of the husband of the petitioner and the husband of the respondent No.2 the properties were mutated in the name of the present petitioner and the respondent No.2 and that this entry was not an illegal entry and therefore there is no question of setting aside the said entry. He has further submitted that after the said entry was made there was family arrangement entered into between the parties in the year 1988 and the entry in question, i.e., Entry No. 1133 was made and certified on the basis of the family arrangement between the parties. He has therefore submitted that the Entry No. 1133 has nothing to to with with the earlier entry No. 985. Once the family arrangement is produced before the authorities and the concerned persons have admitted their execution, thereafter it was the duty of the authorities to make and certify the entry according to the family arrangement.

If any person has any objection against the said entry, then first he has to challenge the family arrangement before the appropriate civil court stating that the said family arrangement is illegal and invalid. In absence of such declaration from the competent civil court the revenue authorities are not entitled to decide the question of legality or validity of the family arrangement. The orders passed by the authorities below are contrary to the settled issue and hence they are required to be quashed and set aside.

7. Mr. Patel has further submitted that while considering the challenge to the Entry, the Deputy Collector has observed about the provisions of the other Acts, namely Urban Land Ceiling Act and his decision was influenced the said observations and hence the same is not in accordance with the law laid down by this Court. In the case of Evergreen Apartment Co-operative Housing Society Ltd., vs. Special Secretary (Appeals), Revenue Department - 1991 (1) GLH 155, wherein it is held that "whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving opportunity of hearing to the concerned parties likely to be affected by any order that may be passed." It is further held that "independently, the revenue authorities, as mentioned in R.108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment." In this view of the matter, the orders passed by the authorities below suffer from this basic infirmity and on that ground also the orders are required to be set aside.

8. On the other hand, Mr. Bukhari, the learned AGP appearing for the respondent No.3 State supports the orders passed by the authorities below. He has further submitted that all the three authorities below had given concurrent finding and the said finding should not be disturbed or interfered with by this Court while exercising extraordinary writ jurisdiction under Article 227 of the Constitution. Even on merits also, he has submitted that the authorities have not decided the issue regarding title of the property. The Deputy Collector has observed in his order that Fuliben, Respondent No.1 herein is not a party to the family arrangement and if the Entry is made on the basis of family arrangement, a grievance can certainly be raised on the ground that the said family arrangement was not made after taking her consent or she was not a party to the said arrangement. The said finding was upheld by the Collector as well as

by the State Government. Hence in any case it cannot be said that by cancelling the Entry and by confirming the cancellation of the Entry the authorities have decided the title of the property.

9. Mr. Bukhari has further submitted that by deciding the issue regarding cancellation of the Entry, a passing observation is made with regard to the other enactments. Simply by doing this, the ultimate decision would not have been a different one and hence no interference is called for in the orders passed by the authorities below.

10. After having heard the learned advocate and the learned AGP appearing for the respective parties as well as after perusing the record and after having gone through the authorities cited before me, I am of the view that the authorities below have not committed any error while cancelling the Entry No. 1133 and confirming the said order of cancellation in appeal as well as in revision before the Collector and State Government respectively. The Deputy Collector is fully justified in cancelling the Entry on the ground that the respondent No.1, namely, Fuliben was not a party and her consent was not obtained. It was also on record that there were 5 grounds given by the Deputy Collector and one ground is enough to cancel the said Entry. Even with regard to the points raised by the Dy. Collector in his order pertaining to other enactments, it is to be viewed from the angle that no final conclusion was arrived at on the basis of the said factor. The decision of this Court in the case of Evergreen Aprt. Co-Op. Housing So. Ltd., cited (Supra) relied on by the ld. advocate appearing for the petitioner does not render any assistance, as in that case also it is specifically stated that apart from the legal position, Section 27 has been struck down as ultra vires, it is quite obvious that no such question of transferring urban land with a building thereon has ever arisen in that case. Here, in the present case, the Deputy Collector has only observed that if the land is vested in the State Government by virtue of the provisions contained in the Urban Land Ceiling Act, the same should not have included in the family arrangement and no Entry should have been made on the basis of such family arrangement. While going through the orders of the authorities below, I find that the title to the property was not decided by any of the authorities. What they have done was only that the Entry was cancelled on the basis that the respondent No.1 was not a party to the family arrangement. By cancelling such Entry, it cannot be said that the title to the property was decided. In this view of the matter, the judgment in State of Gujarat

vs. Patel Raghava Natha & Ors., cited (Supra) relied on by the petitioner does not render any assistance to the petitioner. More over, all the three authorities have decided against the petitioner and while exercising the writ jurisdiction under Article 227 of the Constitution, this Court cannot disturb the said finding of the authorities below on the ground that the finding arrived at by the authorities was perverse and that the said orders were unjust, improper or irrational either in law as well as on facts. In any case the Court does not find it just and appropriate to exercise its extraordinary writ jurisdiction under Article 227 of the Constitution in favour of the petitioner and against the respondents.

11. Having regard to the facts and circumstances of the case and having considered the law as well as the limited scope of writ jurisdiction under Article 227 of the Constitution of India, I do not find any substance or merits in the petition and hence it is accordingly dismissed. Rule is discharged with no order as to costs.

12. It is, however, clarified that the finding given here in this petition is only confined to the cancellation of the Entry and the same may not be treated as the finding with regard to the title of the property and that issue can be decided by the competent court after proper adjudication.

rmr. [K.A. Puj, J.]